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LS 7-0122

25 January 1957

MEMORANDUM FOR: Chief, Policy Planning Staff

ATTENTION :

SUBJECT : Proposed Legislation

1. Attached for your consideration and suggestions are several sections of proposed legislation. They are not in their final form, but do indicate the direction in which we are working. The first four sections are straightforward and are designed to meet specific problems. An explanation of each accompanies the text. Section V is more complex, for it attempts to solve the basic dilemma of the espionage statutes. That is, the necessity of revealing sensitive information in any prosecution brought to protect that same information. We have included two of several alternatives on which we are working.

2. The section which should be most useful in dealing with your problem of the past or present employee who threatens to release information is section I, the statutory injunction. Section II covering solicitation also might be useful in these cases.

3. With regard to your problem of control over employees who resign overseas, we think that more forceful application of various administrative actions should be considered before seeking legislation. We can discuss these at a later date, but in general they involve delay in settling retirement benefits, and other monies owed, and the withdrawal of passports.

  
Office of General Counsel

Attachment

OGC/SKW:jcf

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## PROPOSED LEGISLATION

### I. Statutory Injunction (new section)

Whenever any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any section of this chapter the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices and upon a showing that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Explanation. This section is designed to provide a method by which the Government can forestall violations of the espionage statutes which it has reason to believe are about to occur. Specifically it can be used against anyone who threatens to release a type of information which is covered by the espionage chapter. We think that the requirements of proof will be less rigorous than in a criminal prosecution. Most important, it is hoped that in order to obtain a temporary injunction, the information which the person threatens to release will have to be sketched only in its broadest outlines. Of course, if anyone is determined to release information an injunction would not stop him. It would have, however, the psychological effect of formalizing the seriousness of the acts which he threatens. The punishment resulting from carrying out his threat would no longer be vague and future, but definite and present.

The Atomic Energy Commission has a similar section in its statute. It has never been used, but the threat of its use has been successful. Scientific American, a periodical, was about to publish an article which the Commission thought contained Restricted Data. The Commission requested that the article be amended, stating that it would use its injunction power if the magazine refused. The magazine agreed to amend the article in accordance with the Commission's wishes and destroyed 3,000 copies which had already been printed. In that case the magazine was willing to cooperate at all times.

### II. Solicitation (new section)

Any person who solicits or incites or endeavors to persuade any other person to commit any offense under this chapter or aids and abets or does any act preparatory to the commission of an offense under this chapter shall, upon conviction be punished by a fine of not more than \$5,000 or imprisonment of not more than 5 years.

Explanation. This section describes the crime of "solicitation" which is one step further back than "attempt" in the commission of a crime. Under our criminal jurisprudence many acts in preparation of a crime do not constitute an attempt. This was one of the difficulties in the Kiernan case. It was questionable whether his actions were criminal in that they did not amount to an attempt to violate one of the espionage sections. However, there is no question that his actions would be covered by this section. Thus, in the case of threatened release of information this section may be useful for an actual prosecution of a completed crime. At the very least the existence of this section provides the Security Office with a statute which can be shown to threatening employees to impress them with the consequences of their preliminary actions.

You will notice that we have not specifically included "threats". Thus it is not clear whether a mere threat to release information without other acts would be illegal. The reason for this is that such a prohibition could be subject to abuse by the government generally and unnecessarily restrictive of free speech.

### III. Extraterritoriality (amended section)

This chapter shall apply:

(a) to all acts which are offenses under this chapter when committed within the admiralty and maritime jurisdiction of the United States and on the high seas as well as within the United States, and,

(b) to all acts which are offenses under this chapter when committed elsewhere in the world by United States nationals or others.

Explanation. This section is designed to correct the present lack of criminal jurisdiction over acts of espionage committed outside the United States. We have written the section so that the espionage statutes would cover violations committed overseas not only by U.S. nationals, but by any other nationals. The present section covers violations by anyone if they occur in the United States.

There is no question that the American legal theory would permit the extension of this statute to violations committed abroad by U.S. nationals. There is some question as to whether we can extend our criminal jurisdiction to all others for acts committed abroad. The Anglo-American theory has generally denied a state's jurisdiction over crimes committed abroad by aliens, even if they are crimes against the state. Most continental countries, however, do consider it within their jurisdiction to punish crimes against the state committed abroad by aliens. In this case we think that we should attempt to include aliens acting abroad.

#### IV. Statute of Limitations (new section)

An indictment for any offense under sections 798, 799 and 800 may be found within 10 years after such offense shall have been committed.

Explanation. One of the few ways to avoid the dilemma of the espionage statutes is to lengthen the statute of limitations so that the Government can delay prosecution until the information involved is no longer sensitive. The usual statute of limitations for crimes not capital is five years. The limitation on two sections of the espionage chapter is ten years. The purpose of this section is to extend the ten years limitation to all the sections within the espionage chapter.

#### V. General Statute (new section)

##### Alternative A

(a) Whoever knowingly communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, classified information which

(1) concerns intelligence sources or methods,  
or

(2) is obtained by foreign intelligence components of the United States Government as the result of their activity, or

anyone who attempts or conspires to do the foregoing, shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

(b) As used in subsection (a) of this section --

The term "classified information" means information which at the time of a violation of this section, is, for reason of national security, specifically designated by United States Government agencies for limited or restricted dissemination or distribution.

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in foreign intelligence activity.

The term "foreign intelligence component" includes those agencies or parts of agencies which are responsible for developing intelligence concerning foreign nations.

(c) Nothing in this section shall prohibit the furnishing upon lawful demand of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

Explanation. This section is designed to make the evidentiary requirements less strict in a prosecution for release of classified information. It is based on section 18 U.S.C. 793 which refers to communications intelligence. Although by no means solving all the evidentiary problems, it is hoped that the designation of the particular information involved would obviate the necessity to prove that the information "relates to the national defense" as is required by the other espionage sections. In the past the attempt to prove to a jury that the revealed information relates to the national defense has required voluminous exhibits and testimony. This usually means that not only the compromised information will be introduced as evidence, but also much additional and peripheral evidence which otherwise would not be necessary. It should be noted that the specific information which the defendant is charged with communicating must be revealed at the trial. The best that can be hoped for is to reduce the amount of other sensitive information revealed at the trial.

Alternative B.

Whoever, lawfully or unlawfully having possession of, access to, control over, or being intrusted with any matter or information, with knowledge or reason to believe that such matter or information has been classified as security information by any department or agency

(a) knowingly, communicates, transmits, or discloses, in any manner or by any means, such matter or information to any person not authorized or entitled to receive or have knowledge of it, or who he has reason to believe is not authorized or entitled to receive or have knowledge of it, or

(b) knowingly retains such matter and fails to deliver it upon demand to the officer or employee of the United States entitled to receive it

shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

Explanation. This section is also intended to make the problem of proof easier and again applies only to classified information. It differs from the first approach in that it is not limited to our problem alone, but applies to classified information of all types. It is difficult at this time to tell whether the evidentiary requirements would be more or less strict than in the previous section.